



LAPORTE COUNTY PLAN COMMISSION

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ANNEMARIE POLAN
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES July 28th, 2020

MEMBERS PRESENT:

Anthony Hendricks	Rita Beaty Kelly
Rich Mrozinski	Earl Cunningham
Harold Parker	Glen Minich
John Carr	Walter Sell

OTHERS PRESENT: Annemarie Polan, Building Commissioner, Doug Biege, Attorney, Ashley Kazmucha, Secretary.

PLEDGE OF ALLEGIANCE

Anthony Hendricks asked for approval of the meeting minutes June 23rd, 2020.

Richard Mrozinski made a motion to approve as presented.

Earl Cunningham seconded.

All approved. Motion carries 8-0.

Anthony Hendricks asked for approval of the agenda for the July 28th meeting.

Harold Parker made a motion to approve the agenda as presented.

Rita Beaty Kelly seconded.

All approved. Motion carries 8-0.

Petitions:

1. Petitioner Michael P. Kelly and Elsa G. Marrufo de la Fuentes represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner") respectfully petitions the Plan Commission to vacate the undeveloped but plotted roadways and/or alleyways adjacent to and between the property commonly known as 130 Lakeside Drive, Walkerton, IN., Lincoln Twp., zoned R1B on .03 acres. Exhibits attached hereto.

Attorney Biege stated notice is adequate.

Andrew Voeltz stated he is representing Michael P. Kelly and Elsa G. Marrufo de la Fuentes in regards to their petition to vacate a plotted, but undeveloped roadway/alleyway adjacent to and between their property located at 130 Lakeside Drive. The property owners who he represents are owners of several parcels in the vicinity. A plat of Highland Beach subdivision has been provided to the members of the Commission. It was executed in September 1923. The plat shows the area in question to the northwest side there is a tiny area of land that has been described as a public way or public walk that leads from the road inland. The beacon map attached to the original petition shows the area delineated as a public way near upper Fish Lake. The Highland Beach subdivision plat shows an area of land near the water that was platted for public access. Beacon shows the entirety of the public access around the peninsula has been vacated by every land owner except for the Fish and Wildlife club portion and the one pertaining to his clients. This is the only remaining area that has been designated as a "public way". The dock owned by his clients extends directly from the "public way" and is not public. There are two trees growing directly in the pathway of the "public way" and there is a shed that extends into it. His clients are in the position to be granted this petition to vacate this "public way" because it serves no purpose at this point. It is a public walk that goes directly between their parcels and leads to a lakeshore where the public does not have any access. If the Plan Commission determines that they will advise the Commissioners to vacate this they would agree. If the Commission decides that they do not want to vacate and leave public access to the beach or waterway, his client would propose moving the access from the middle of his parcel to near the south, southwest of where his property line is. If the Plan Commission should so desire that they would like to keep beach access open, even though there is no beach, the client would be amenable to moving it from the position it is now to the bottom half of his parcel to maintain water access. They would respectfully request that the Plan Commission make a favorable ruling with concerns to vacate the plotted, but undeveloped roadway/alleyway and allow his clients to solidify ownership of their parcel.

Earl Cunningham asked if they are proposing to move the red portion represented on his Beacon map all the way to the south end of the property.

Andrew Voeltz stated in the alternative. They request that it just be vacated as a matter of law, but if the Plan Commission determines there still needs to be an access point to the lake, then the client would be willing to move it.

Earl Cunningham stated the lots are narrow, but how far does the parcel extend.

Andrew Voeltz stated they own Lot 1, Lot 14, and Lot 16. Lot 14 and Lot 16 are joined, but are still referred to separately.

Anthony Hendricks stated that in his private world, they performed a survey for this individual and it is complete. The survey that is open for the public to view shows that there is only six feet (6') of this access left. It is not platted anymore.

Andrew Voeltz stated that is correct. He did receive a copy of the survey today, but was unable to print copies for the Commission. There are discrepancies between the survey and what is indicated on Beacon that needs to be addressed. The survey shows an area moving from

Lakeside Drive to the lake that winds up being a sixteen feet by ten feet (16' x 10') cut out that looks like it may have been a public launch at some point.

Anthony Hendricks stated Fish Lake has a sixteen foot (16') wide public access all the way around the lake and typically ninety-nine percent (99%) of the people had that deeded to them fee simple. This was one tiny square that was public access so it was never deeded to any owner. There is a strange sixteen-foot (16') wide by six-foot (6') piece.

Andrew Voeltz stated he believes Tony was able to confirm that there are two trees directly in the middle of the piece not reflected on the survey.

Anthony Hendricks stated he has walked the piece and there are two trees and there does not appear to be any public use at the time.

Rita Beaty Kelly asked if he is aware of anybody using it other than the homeowner.

Andrew Voeltz stated there is no one. His clients made the mistake of purchasing the property without obtaining a survey and discovered this after the fact. This is dissimilar to the inland beach access points that are on Pine Lake because those have been maintained and declared sacrosanct throughout the years. This is different because everything that this access point lined up with on the lakeshore has already been vacated. It is a point to nowhere.

Remonstrators:

Marianne Krupa stated her address 134 Lakeside Drive, Walkerton, IN.

Mariann Krupa asked how they know the access isn't being used by children? Are they there to know? There is a little girl across the street that has a kayak and goes swimming there. It does get used by children. What are the plans for the land? Do they plan to build there?

Andrew Voeltz stated he does not have the ability to sit out there all year long to know if anybody is using it, but again it is a point to nowhere. While there may be a plotted, but undeveloped public use access, it terminates before the lake shore. It doesn't go all the way to the lake shore. If there is in fact a neighbor girl who uses it to access, the neighbor girl or her parents should contact the homeowners directly and get permission to access there. He does not believe it is that big of a deal. With regard to what he intends to do with the property, he intends to vacate it. There is nothing he can do with it. It is a six foot by fifty foot (6' x 50') plotted, but undeveloped roadway there. He can't build anything there. He is simply trying to firm up what his ownership rights are. If the Plan Commission determines that it should be vacated, they would agree with that, but if they determine they need to leave a point of access for inland owners then the client would be more willing to have this portion moved to the corner of his first parcel.

Rich Mrozinski made a motion for a favorable recommendation for Petitioner Michael P. Kelly and Elsa G. Marrufo de la Fuentes represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner") to vacate the undeveloped but plotted roadways and/or alleyways adjacent to and

between the property commonly known as 130 Lakeside Drive, Walkerton, IN., Lincoln Twp., zoned R1B on .03 acres.

Rita Beaty Kelly seconded.

Approved. Motion carries 7-1.

2. Petitioner Dennis R. and Cynthia L. Dittrich represented by Andrew D. Voeltz of Howes & Howes, LLP (“Petitioner”) respectfully petitions the Plan Commission to vacate the undeveloped but plotted roadways and/or alleyways adjacent to and between the property commonly known as 7189 North Point Road, New Carlisle, IN., Hudson Twp., zoned R1B on .242 acres. Exhibits attached hereto.

Attorney Biege stated notice is adequate.

Andrew Voeltz stated he is representing Dennis R. and Cynthia L. Dittrich in regards to their petition to vacate the plotted, but undeveloped roadway/alleyway adjacent to their property located at 7189 N. Point Rd., New Carlisle, IN 46552. There was an accompanying petition filed last year April 23rd, 2019 in which their neighbors Steve Liskey and Natalie Chabot, who are present tonight, filed a petition to vacate their portion of the same area and received a favorable recommendation from the Plan Commission that was ultimately approved by the Commissioners under ordinance number 2019-12. This petition seeks to completely eliminate the area that was there that some people had identified as an easement or a public access. He has found nothing in the deed record to show that any of that was accurate. The plat records he showed to the Plan Commission a year ago, indicated that this was a plotted but undeveloped roadway/alleyway. The Plan Commission ruled favorably to recommend to the Commissioners that the Liskey and Chabot portion of this be vacated and it has since been vacated. Precedent exists here to do so. The aerial shows there is a pathway there, but the pathway is so far removed from whatever could be considered something for public access to the beach. It simply does not exist. He has checked and has not found evidence that shows that any other adjacent landowner has an “easement” to access the lake through this portion in which half has already been vacated.

Attorney Biege asked if he had the ordinance. Why would they vacate half?

Andrew Voeltz supplied the ordinance to Attorney Biege. He stated that they are not contiguous on both sides. One side is owned by Liskey, whereas the other side is owned by Dittrich. Under the statute you only get half when you vacate it. The other party has to file the petition to get the other half.

Attorney Biege stated he will have to look at the law. That was not his understanding. He understood that once it is vacated, it goes to each adjacent owner.

Andrew Voeltz stated he could be wrong, but his understanding was that each adjacent owner needs to file a petition or joint petition to do so. In the case of the petition that came before the Commission last year was only filed by Steve Liskey and Natalie Chabot. It was not co-filed with the Dittrich’s.

Attorney Biege stated that in the past, the way the county has dealt with it after the vacation occurs, the auditors and real estate office splits the portion and gives half to each parcel automatically. If it is vacated, it is vacated. They do not vacate just half; they vacate the whole portion. They should have. Did they check with the real estate office to see if they made any changes?

Andrew Voeltz stated they have not. It is still showing as no owner indicated.

Anthony Hendricks stated that is his understanding as well. Once they vacate, they vacate the whole portion and half goes to half. It doesn't matter who petitions. The vacation to the Commissioners is for the whole right-of-way width.

Attorney Biege stated this may be more of an administrative issue with the real estate office.

Anthony Hendricks stated he has never seen the Plan Commission vacate half.

Andrew Voeltz stated the language in the ordinance in the legal description reads the south half. If it was an error then it needs to be remedied.

Anthony Hendricks stated then the Plan Commission can vote to fix the error.

Earl Cunningham asked Rich Mrozinski if this is the same thing they did out by the Legion in Rolling Prairie. Each party got half.

Rich Mrozinski stated yes, exactly. In the years he has been involved, he has never seen any party refuse to take their half.

Earl Cunningham stated they could do nothing and perhaps administration will figure it out or they can go ahead and approve it tonight.

Rich Mrozinski stated they could reaffirm it.

Attorney Biege suggested a clarification vote that the entire alley is vacated rather than the just the south half because the Plan Commission has already taken action on this issue.

Remonstrators:

Pat Gilmore stated her address is 721 Country Club Ln., South Bend, IN.

Pat Gilmore stated she has owned three of the four properties in question until 2017. 1788 N. Point Rd. has been in her family since 1976 when it was originally bought. The land was obtained from the South Shore in 1981. From that point forward, it has showed that there is a ten-foot (10') access for four homes. The Liskey's and Dittrich's live on the lake side. The other two properties are directly behind their homes and share that ten-foot (10') access. In 2017, she sold the Liskey property to them and the Staatz property to them, which is 7194 N. Point Rd.

Prior to that, it was an open access. In 2017, a LaPorte County judge granted an order that quieted that access for the Liskey's sake so it wasn't an open access so that not anybody could use it. In the language of the quieting, it states, "while plaintiffs are quieted to the real estate, the real estate shall remain subject to the ingress/egress of the walkway easement granted to the owners of 7188 N. Point Rd. and 7194 N. Point Rd., New Carlisle, IN." Ingress/egress walkway easement runs through those parcels. She also has from Beacon from 2017 an aerial that clearly shows the ten feet (10') between the Liskey's and Dittrich's exists. This is not an alleyway. This is not abandoned. Those two properties use that to get to and from the lake. The Dittrich's and Liskey's are proposing that the Plan Commission close off that ten-foot (10') walkway to 7188 and 7194 N. Point Rd. to where they would no longer have lake access. It would greatly impact the value of their properties. She owns 7188 N. Point Rd. now and was going to put it on the market when she received notice in the mail of the petition. She never received notice before about the Liskey's vacation. She does not know how it could have happened because she never received notice. She still pays taxes in LaPorte County and her tax address is the same as it has always been. The Liskey's have given mail to the resident at 7187 that was addressed to her so they clearly knew how to get ahold of her. The Dittrich's also are fully aware of where they moved. At anytime they could have received a certified letter saying there was a motion. Saying they received it or posted in the newspaper doesn't seem fair when they knew exactly how to get ahold of them. Why would she ever sign off or ok something that would affect her real estate so drastically. She has proof of every major event that has happened there since 1976 with that property and until 2017 she owned all three properties. They quieted it for the Liskey's so that they wouldn't have traffic and unnecessary commotion going on. It is signed by a circuit judge.

Attorney Biege asked for a copy of the order.

Pat Gilmore stated that the Dittrich's had to sign off on the quieting. They were fully aware of what they signed off on three years ago. To say that is a roadway and easement is an out right lie. It's not. It is an access and the only way they can get to the lake.

Anthony Hendricks stated Attorney Biege will look at that.

Jacqueline Staatz stated her address is 2033 W 17th St., Chicago, IL.

Jacqueline Staatz stated she owns the home at 7194 N. Point Rd. She uses a deeded easement on the area as her access to Hudson Lake as its intended purpose. She has the warranty deed that was recorded on July 31st, 2017. She does not now nor has she ever waived her rights to the easement. As a member of the public, this walkway easement was for access to the lake. She would not want the vacating of the area to be detrimental to her use nor to the property value of her land. In regards to the earlier vacation, she was never served with the petition. (Note of Point: Records show that she was adequately notified.) She had seen the Liskey's in various times through the year. They also have her phone number and email address, but it was never mentioned to her in terms of the vacation. She feels she should be able to use her lake access without fear, intimidation, confrontation, or harassment.

Attorney Biege asked for a copy of the warranty deed.

Jacqueline Staatz stated she also has a copy of the Liskey's survey that shows there is a walkway easement as well.

Steve Liskey stated his address is 7187 N. Point Rd.

Steve Liskey stated he bought the property in October 2017. There were a lot of questions that were directed to the Gilmore's, including some regarding the ownership of what they call an easement, but they have found no record personally nor has the County of said easement. They bought it with the understanding that the property was theirs. They were told there were two properties and nobody has the rights outside those owners. Nobody has the right to rent or do anything to it. They went to the courthouse and there is no record. There are no deeds. Then there were renters from craigslist from one of the owners across the street that are treating it non-stop as public access. They traverse through their front yard and along their concrete patch which lies on their property. It has become dangerous to his family. It is dangerous to his nine-year-old when there are craigslist people partying on your beach non-stop. They are going on their beach, digging out sand pits, filling them with wood from their wood pile, and they come home to their pool being open. They vacated their portion because they believed they were frauded. They were told one thing in front of the realtors. They would not have purchased it if they were told otherwise. They sought legal counsel who said they must try to mitigate it. They tried to mitigate the disaster that they were set up for when they purchased their home. The land in question, the five feet (5') remaining that was not vacated when they vacated their half has no legitimate access to the lake. Physically it cannot be done. It is covered in grove trees and rocks. It can not work out to be a functioning access to the lake. Around the corner, there is a public access less than a four (4) minute walk away. It's the same one that the government maintains for emergency access on the south side of the lake. Across from there is a full beach with sand. On the west side of the lake is the new DNR. There are tons of access that doesn't involve trampling their rights to live there as they were sold the property.

James Staatz stated his address is 57944 Lemon Rd., New Carlisle, IN.

James Staatz stated his daughter owns the property at 7194 N. Point Rd. His parent bought the property in 1971 with a recorded easement. He inherited it in 2007 and sold it to the Gilmore's. Three years later, his daughter bought it back. It has always been an easement. Did the Plan Commission physically go and look at this easement? It is clearly a pathway with stairs to the lake. It has been for forty-nine (49) years. If the Liskey's had a problem with somebody making noise on the beach or threatening their family, perhaps they should have called the police. Nobody was ever called.

Pat Gilmore stated that since she sold the property to the Liskey's, when they received their closing papers, it included a paper called "Exhibit 1" which clearly stated part of the deed. He claimed he couldn't find the deed, but she has them and has since 1971. If anybody needs copies, she has the land deeds. Every transaction that has ever occurred from 1976 until now; when it was bought in 1976, when the land was purchased in 1981, when the deed was changed over in 2011, when the deed went into a trust in 2015, and when it was quieted in 2017. They were clearly aware there were stairs. She built brand new stairs and put a fence by their stairs so nobody could walk down those stairs and enter into their pool area. She doesn't blame him for

being upset. If she spent the money that he had and found out that somebody was renting, she would be upset. She would not want traffic of unknown people down those stairs. He has a child and she empathizes with that. She would feel the exact same way. Unfortunately, they are talking about land value. When he says he doesn't want unknowns, she understands. But now what he is doing is affecting her property rights and that isn't right just because somebody is renting their property. Legally you can't take away somebody's land because you don't like what they're doing.

Attorney Biege asked if she could scan and email the deeds to him.

Pat Gilmore stated yes.

Dennis Dittrich stated his address is 7189 N. Point Rd.

Dennis Dittrich stated he is the petitioner. He stated they have had people they don't know going down to the beach and partying. They even opened up the Liskey's pool and used it when they were away. He stated James Staatz said they are not responsible for what the renters do. He thinks they are. They need to take care of that. They don't know who these people are. They go back and forth. It is noisy and messy. They would like to get that property and put it on the tax roll. He does not like to be called a liar.

Jacqueline Staatz stated that her renters are from Airbnb. They get checked via Airbnb's website. The Liskey's had their phone number. They had indicated if there was ever an issue that she could be contacted. Up until last summer, there was never an issue. He called last August indicating that there was bonfire on the beach. She told him they would take care of it. Mr. Liskey was upset which is understandable. She wanted things to go smooth and not cause trouble. They spoke about it and thought they ended on good terms. She told him she would make it right. He no longer wanted to speak about it and she was never contacted after that. Every time before that she would ask if there was ever an issue and there wasn't. They had contact info for her and she was never contacted in regards to it. Prior to last year they were on good speaking terms.

Pat Gilmore stated that she built the pool. It has a key. They stated the renters got into it, but you cannot get into it without being on their property with the key to open the cover.

Natalie Liskey stated her address is 7187 N. Point Rd.

Natalie Liskey stated she wanted to talk about the human experience of someone who lives there full time. She has a nine-year-old (9) little girl. People walk down the path littering and starting bonfires. Not only on the property in question, but also on her own land. That's her human experience right now.

Anthony Hendricks asked Attorney Biege where they go with this from here if someone has been to circuit court for an easement. The right-of-ways are under the jurisdiction of the Commissioners which is the Plan Commissions jurisdiction to recommend either way our public

right-of ways. Easements through circuit court are a whole different animal that they don't have any jurisdiction over. How do they proceed?

Attorney Biege stated that this isn't right for a decision because on one hand he agrees. You can grant an easement through a deed or the court can validate an easement, however if that platted subdivision existed prior to the grant of an easement or the courts verification of the easement, the court order is null and void. It also depends on who the defendants are. He suggests this matter be tabled so he can get to work and give the Commission an opinion onto the validity of the easement and the court order as well as the platted subdivision.

Anthony Hendricks stated that the Plan Commission and the Commissioners have the right to vacate right-of-way's and platted alleyways. That may not stop if there is a court order and agreed easement between owners. They would have no jurisdiction in the matter. If it was vacated and there is legitimate easement by the adjacent owners ordered by the court, that is an entirely different legal animal.

Andrew Voeltz clarified that his understanding is that if there was a plotted, but undeveloped roadway that existed prior to an easement being granted, if it is vacated the easement is null and void.

Attorney Biege stated it depends how the quiet title action was file. He needs to go back and review the quiet title action.

Andrew Voeltz asked if he could receive copies of everything he has and will receive.

Attorney Biege stated yes.

Andrew Voeltz stated that for the record, notice was adequate in both petitions.

Earl Cunningham made a motion to table the petition for Petitioner Dennis R. and Cynthia L. Dittrich represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner") to vacate the undeveloped but plotted roadways and/or alleyways adjacent to and between the property commonly known as 7189 North Point Road, New Carlisle, IN., Hudson Twp., zoned R1B on .242 acres.

Harold Parker seconded.

All approved. Motion tabled 8-0.

Attorney Biege stated he will give notice to the Building Commissioner if something should arise that would cause a delay.

3. Petitioner Keith A. and Angela A. Johnson represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner") respectfully petitions the Plan Commission to vacate the undeveloped but plotted roadways and/or alleyways more commonly known as North LaPorte Boulevard, New Carlisle, IN., Hudson Twp. Exhibits attached hereto.

Attorney Biege stated notice is adequate.

Andrew Voeltz stated he is representing Keith A. and Angela A. Johnson in regards to their petition to vacate the plotted, but undeveloped roadway/alleyway adjacent to their property more commonly known as North LaPorte Boulevard, New Carlisle, IN 46552. Their primary address is 8063 E. Long Ct., New Carlisle, IN and they own a parcel across the road from them that is adjacent to North LaPorte Boulevard. They have owned this area for approximately the last twenty (20) years. They have maintained this property for a long time. The area in question is a plotted, but undeveloped roadway that is identified as North LaPorte Boulevard that runs up to and into the swamp. He has pictures displaying the work the Johnson's have done with the area in question that they are seeking to vacate. They also have receipts from K-Fex in regards to what they paid for gravel in the area. This is a unique situation out on Hudson Lake where there are all these plotted, but undeveloped roadways that lead to nowhere. They purchased the property with the tax ID number of 46-04-28-113-006.000-050 and they were under the assumption then that they owned what was in the roadway there. They have used this area for a period of at least fifteen (15) years. They have maintained it, improved the area, and recently discovered that they have no ownership interest there. They are seeking to vacate the one half for them and the other half would go to the adjacent land owner. This would firm up what is happening and solidify their ownership of this tiny corner of their world.

Remonstrators:

Anthony Novak with Newby, Lewis, and Kaminski & Jones, LLP stated he is representing John and Gail Haneberg. (John Haneberg handed out a packet prepared by Anthony Novak) He stated the Haneberg's own property right near the area that is being vacated which is 8016 E. Long Ct., New Carlisle. Exhibit 1 is an aerial that shows E. Long Ct. that is roughly fifteen-twenty feet (15' - 20') in width that leads to the public way in question. The Haneberg's use this way to access their property. Because it is narrow and ultimately the entrance to their property slightly to the north of E. Long Ct., they have to turn slightly north into that public way of LaPorte Boulevard, then ultimately turning left to be able to access their property. When people drive to the Haneberg property including commercial vehicles, deliveries, emergency services they need to use a portion of the land that's seeking to be vacated in order to turn around because the area to enter there is so narrow. By vacating this portion, the public way and turn around will no longer exist. This is a dangerous situation because Mr. Haneberg spoke with the New Carlisle Fire Department and they indicated that without this public way existing as it is, they would not be able to safely access his property and turn around. They are objecting to this petition for two main reasons; first, it would make access to their property difficult and inconvenient and second, it will create a dangerous condition in that fire trucks, ambulances, and other vehicles will not be able to easily access in and out of that area if it is vacated. The Plan Commission sees a lot of petitions to vacate and they should typically only be granted where the public is not actually using the public way. Mr. Voeltz is correct. In this area of the county, there are many plotted, but undeveloped roadways all the time. In this situation, this plotted, but undeveloped roadway is used. He mentioned that his clients had improved it. He understands that, but before you purchase property you need to do your due diligence before you improve county land. While he recognized the issue of spending money on that, he does not believe that a petition to vacate to

correct an issue that could have been solved through due diligence, should be his client's problem. The Haneberg's purchased their property in approximately 2001. They put up a chain link fence in the public way incorrectly. At that time, Mr. Johnson came out and removed that fence of his own volition and told the Haneberg's that the fence was on public land and needed to be moved. Despite Mr. Johnson having his fence and moving Mr. Haneberg's fence, had incrementally begun to inch his way into the public way over the last fifteen (15) years. He has improved the public way and is now asking for it to be vacated because he has improved it. First, he parked there, then he filled it in, then he put in a garden and fence, followed by a shed in 2020. He is using it so much that he has now put in traffic cones on the public way and letting his clients know that they are trespassing if they go across the county property. They have called the sheriff department out there stating that his client was trespassing on their land. Exhibits 2 and 3 show the narrowness of E. Long Ct. and the cones that have been placed. Exhibit 4 shows truck and a trailer that is owned by the Johnson's that is completely parked in the public way. Exhibit 5 shows the location and the shed and fence that are taking up the entirety of the public way. Exhibit 6 shows that the fence is just slightly left of the grass at the end of the public way. Not only are they using all of the public way, they also have a fence that is on Mr. Haneberg's land. You can understand the frustration of his client and the irony of what happened in 2001. Despite there being issues between the parties, vacating this will cause more harm to the Haneberg's than any benefit to the Johnson's. This is the entrance to the Haneberg's property as opposed to the Johnson's. This is in the rear of their property where they are keeping a shed. It has nothing to do with access to them. It's simply trying to get this vacated so they can correct issues that the ultimately created themselves. In short, they ask that the petition to vacate be denied and that the public way remain as it exists.

John Haneberg stated his address is 8016 E. Long Ct., New Carlisle.

John Haneberg stated that the only difference from what Anthony Novak stated would be about the chain link fence. He did not put up the chain link fence. It was there when he purchased the property. It was placed there by the previous owner. A year after moving in the fence was removed. Mr. Johnson and his father removed it. Mr. Johnson's father told Mr. Haneberg that they moved it because it is county roadway and they don't have any right. It is county road and for the Johnson's to say they didn't know conflicts previous statements. The two statements are incongruent. They took the fence down and moved it without permission because they knew it was county roadway. Then they start building structures and claim they didn't know. It was dirt and grass and he maintained it when it was inside his fence. They asked him if he'd mind if they parked a car there and he let them. Then they added a fence, a garden, a planter, a shed, and another fence. They have the whole road. He has digital proof of what the road used to look like. In 2003, Long Ct. was still gravel. When they paved it, they did not extend into LaPorte Boulevard. They left it stone and grass. Mr. Johnson eventually dumped gravel there and made it his own. It is county road and it should stay county road. He put up the fence and has reduced his access to his property line to eleven feet (11'). He can't take down their fence, but they took down his. They have endured a bus being parked there, three trailers and four vehicles.

Angela Johnson stated her address 8036 E. Long Ct., New Carlisle.

Angela Johnson stated that her father-in-law was ill from 2000 until he passed in 2004. He was not out much doing things. In the pictures supplied, it shows that they had removed some trees that opened up the area. They did this in 2013 when they accidentally blocked him in. It was not an easily maneuverable area. The fence they put up is the exact same length as Mr. Haneberg's fence and is to the east side of his fence so they did not put it on their property. They were under assumption that the road area was their property. They have done nothing, but to open it up and give more access to everyone. The other neighbors on the other side utilize it to park. Their parking is very slim on their property. They do have a lot of vehicles and trailers. She has driven a school bus since 2015 and it has been parked there and it has never blocked the lane for them to get in. The UPS truck can come down and turn around freely. The engineer was there to witness when the UPS truck came down and turned around. On June 14, Mr. Haneberg had a bucket truck go through that opening into his property with no restriction. They make sure when they park, they are off of the road. They cut wood. They bring their trailers home to unload and stack the wood because they heat their home with wood. In occasion, they may be in that roadway. Today when approaching her home, Mr. Haneberg was parked in the road talking to the neighbors on top of the hill. She kindly drove around him. That's what they do there. The roads are small. They are not wide. They have done nothing to cause harm and have not meant to cause harm. Had they known that it was not vacated years ago or with their property, they would have petitioned for vacation long before now. They just want it to be the way it was. They maintain it. They plow it in the winter so that when people come down the road they can access. They are the only people that live there year-round and they maintain that whole area. They have never had a problem telling people they could not drive on it even under the assumption it was theirs to maintain.

John Haneberg stated they plowed up the snow and plowed it into his gateway. When they get there, they can't get in because it's a ball of ice and a pile of snow. If the fire department needed to get in, they couldn't. They would be two hundred feet (200') from his home. If the bus, cars and trailers aren't in front of the gate, an emergency vehicle could not get in there. It is a roadway not a parking lot. If they want to park there, it should not be over night and it shouldn't be so packed that you can't move. Two people have seven vehicles and it is packed. They created their own problem and they're asking for a government solution to it. They bought the property and they moved the fence. She didn't say her husband didn't move the fence. She said her father didn't move the fence. They did call the police for them driving on the corner of the property even though he didn't run over any cones. They said he ran over the corner of their stone property.

Anthony Hendricks asked if any of the owners in the area had a survey to know where any of these corners actually are.

Andrew Voeltz asked Anthony Novak if he had a survey.

Anthony Novak stated that John Haneberg has something that shows where his lots are located, but it does not get into the plotted ways around it. He does not have anything in his possession.

Andrew Voeltz stated he would recommend to amend the petition and allow it to be table so a proper survey could be commissioned to delineate what they are talking about. The photos are

illustrative of what's going on out there, but they do own the corner of the gravel where the cones are placed based upon their ownership of the parcel in question. A proper survey may need to be done in regards to the specific area identified. The remonstrator should also understand that if it is vacated that he will receive one half. He is talking about his access being eliminated, but he will be gaining one half that will allow him access. They respectfully request that this petition to vacate the plotted, but undeveloped roadway known as North LaPorte Boulevard in New Carlisle be vacated in favor of the Johnson's.

Anthony Hendricks stated that if it was vacated for some reason or not and Mr. Haneberg receives his half, a good portion of what the petitioner is asking for is on Mr. Haneberg's half. There may be some discussions regarding this and it may be best to table this so each owner can understand what exactly they would be getting. They can then determine who's shed, fence, or gravel is on either half.

Andrew Voeltz agreed. The shed will also be moved so it will be on their half of what would be vacated.

Anthony Hendricks stated it appears as though not just the shed, but also the fence, the gravel, and other things would need to move.

Attorney Biege stated they have to have a way to describe what is being vacated because they would not be vacating up all the way. They would need a legal description specifically to the area in question.

Rich Mrozinski stated that since this will be ultimately the decision of the Commissioners anyway when he first heard about this a few weeks ago there was an issue with the school bus. That wasn't honest when they were told there were no issues with the school bus. He went out to the site and took a video on his phone and shared it with other members of the Plan Commission. There are a couple different issues. The first issue would be the vacation; if they were to vacate half of that road, Mr. Haneberg would have limited access to getting on that property. They had the fire department and ambulance come out to see the entrance and they stated they would not be able to get in and service the property if they vacate it and a fence is placed. Looking at what has been done already, they would most likely place a fence there. Mr. Haneberg may get half when they vacate it, but what good is it going to do if you can't get in or out of your own driveway. Or if a firetruck or ambulance can't get it. The other issue, is the fence erected between county property and Mr. Haneberg's. They have no right to put a fence on County property. He already explained this to the Johnson's. It has to come down. They built a building on County property; you can't do that. You can't just put a building on County property. In light of the fact that they do need a good survey there, there may be other things that they have done there. He appreciates the fact that they're taking care of it, but it's not their property to take care of. If you infringe upon County property, you can't have it. This is not new. This happens a lot in Hudson Lake, Saugany Lake, and Fish Lake. He could have a full-time job just chasing these things down. What happens is when somebody lives there a long time and somebody new comes in and starts building and the neighbor lets it go. Then somebody new comes in and says you're infringing on somebody else's rights because that isn't your property. He doesn't know why they can't just get along. What happens is when these things build up, we end up here. Then we have to sit down

and go by the letter of the law. If you have stuff on County property, you're going to move it. If you want to improve the County property like that, that's your dollar, but you are not going to infringe on your neighbors' rights or on the rights of the County. Will we ever pave it? He doubts it. He sent the county engineer out there to look at Long Ct. coming down and it is narrow. It has been that way for a really long time. They're not going to widen it, but the safety issue is what they're there to talk about today. He would make the motion that they table the petition until they get a survey, but survey or not he will never vote that they can vacate that because it is putting the Haneberg's in a bad situation that will be unsafe. He would like to see a survey on it. He would like to see what else is on County property besides the fence and the building. Mr. Haneberg stated they called the cops on him. They do have a camera out there. They know when somebody is on the property. Not too long after he got back to his office, he got a call from Mrs. Johnson who stated she saw him out there. He thinks both sides are antsy right now. The question comes down to the vacation. There's no way he will ever allow it. If the committee thinks it a good idea that they get a survey then he will make that motion, but as far as the vacation he will never vote for it.

Anthony Novak stated while he understands it's important to have a survey to know exactly what is public way and what is not, he doesn't see how it is relevant. When you have a petition to vacate, you have to show a couple things. Mr. Voeltz petition states in paragraph three and four that the undeveloped, but plotted roadway and/or alleyway are not being used for any public purpose and that the vacation of the undeveloped, but plotted roadway would not be detrimental to any public use or purpose. When doing petitions to vacate, the petitioner has to show by a preponderance of evidence that those elements exist. They cannot show more likely that those elements exist because there is currently a county resident that is using that for a public purpose. Mr. Haneberg uses public land to access his property. To vacate a portion of it doesn't get around the fact that the petitioners need their burden of proof and therefore it should be denied. The Chief of the New Carlisle Fire Department states that it creates a dangerous situation. He recognized that the Johnson's said that they built on property that they thought they owned, but that is a civil matter. They should have done their due diligence when they purchased this real estate. Unfortunately, it appears that they didn't. If they want to go ahead and get a survey to show specifically what is theirs, but there is not sufficient evidence from the petitioners. There has been more sufficient evidence from the remonstrator that the petition should be denied. He requested that it is not tabled, but instead there be a motion to deny.

Andrew Voeltz stated that while he respects what Mr. Novak is saying with regards to access, the members of this Plan Commission have all recognized that Long Ct. is extremely narrow. The portion of North LaPorte Boulevard that would be vacated is no narrower than what Long Ct. is. There is certainly a way for the remonstrator to access his property. They stated that the petitioner has not proved by a preponderance of the evidence that this would not be detrimental or that the plotted roadway/alleyway isn't being used for any public purpose. How can it be used for a turn around if there are in fact vehicles being parked on it as indicated by the remonstrator. He was amenable to parking. How can he remonstrate and say that they can't have it, but they can park there? It is not his land to determine that. This is County property which is why they are doing a petition to vacate County property. This has nothing to do with the remonstrator saying he has no problem with them using it for a parking area. That is not up for consideration here. While the statements may or may not have been made by the Chief of New Carlisle Fire

Department, if this was a courtroom that would be hearsay. He is not here. He has not said it himself. He understands they're not in a courtroom, but there is no one there that has been a representative of New Carlisle Fire department or any correspondence to say that it wouldn't work.

John Carr made a motion to deny the petition for Petitioner Keith A. and Angela A. Johnson represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner") to vacate the undeveloped but plotted roadways and/or alleyways more commonly known as North LaPorte Boulevard, New Carlisle, IN., Hudson Twp.

Rich Mrozinski seconded.

Anthony Hendricks stated if you table and there was a survey, the individual of the cost would be high. If they wanted to improve the County right-of-way, they needed to come to the Commissioners and ask because they maintain liability for emergency access and any other things going. The picture he brought in shows the bus parked there. If a survey is done, there is a high probability neither party will be back in front of this Commission because of the things that survey would show.

Denied. Motion carries 7-1.

4. Solar Ordinance

Attorney Biege stated you should all have a draft. Since it's new he imagined there would be some discussion and tweaking. It does not need to be voted on tonight, but he wanted everyone to look it over.

Anthony Hendricks stated he looked at it. It looked very nice. He asked Mitch Bishop if it would pass at some point in time, what it does not let people do.

Mitch Bishop stated it was basically drafted by the manufacturers and adopted by St. Joseph County. One of the edits made was the removal of façade mounted panels being allowed. He sent the draft to LaPorte City and Michigan City for their feedback as well because it will be a part of the Joint Zoning Ordinance. He has not heard back from them.

Attorney Biege stated he has not heard back either.

Annemarie Polan stated there is a surrounding area near a doctor's office with really high grass. There is nothing on maintenance in the draft. Maybe we could put something in there. (She gave pictures to Attorney Biege.)

Mitch Bishop stated it has recommendations for native plants that would not require regular maintenance. He agreed that in a residential area it does make sense that there be some type of maintenance provision. It is not in residential areas as written currently.

Harold Parker stated he is worried about the right to remove in agriculture developments than residential. It portrays that if the land is rented and they have the rights, the property owner is the one who is assessed if they do not remove. Since it is a hazardous waste problem and very expensive in twenty (20) years if it is obsolete or changes corporations, will it be solely the owner's responsibility. Should we put some type of money fund in there that would protect clean up? That could be a half-million dollar clean up in twenty (20) years. They need something for protection.

Attorney Biege stated he wonders if there is some type of bond that would be available to the contractor. He stated he can call some insurance companies to see if they offer that type of bond.

Anthony Hendricks asked Mitch Bishop if he could reach out to others in the State to see what they have done to solve that problem.

Mitch Bishop stated he will. He stated page three of three (3) ordinance needs to be edits made to the table where it reads accessory use, primary use, and special use. Page two (2) still mentions under A1b that facade mounted systems are allowed and needs removed.

Anthony Hendricks asked if there is any old business.

Anthony Hendricks asked for any new business.

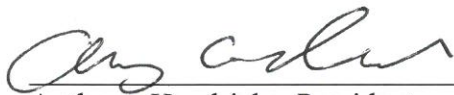
Anthony Hendricks asked for a motion to adjourn.

Rich Mrozinski made a motion to adjourn.

Rita Beaty Kelly seconded.

All approved. Motion carries 8-0.

There being no further business before the Plan Commission, meeting adjourned at 7:21 p.m.



Anthony Hendricks, President



Annemarie Polan, Recording Sec.